IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6506 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHEBUBBHAI ALLARAKHA DIWAN

Versus

DISTRICT MAGISTRATE VADODARA

Appearance:

1. Special Civil Application No. 6506 of 2004

MR BC DAVE for Petitioner No. 1

MS AC RAVAL, AGP for Respondent No. 1-2,4

RULE SERVED for Respondent No. 1-2

MS PJ DAVAWALA for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 18/08/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu

has challenged his detention order dated 7-5-2004, by which he is detained under the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, in view of his alleged black-marketing activities. In the detention order, it is alleged that the petitioner has tried to sell blue kerosene and diesel by charging high price. It is also mentioned in the order that at the time of raid on the premises, i.e. hotel of the petitioner, certain quantity of blue kerosene was found for which there is no permit or bill. It is alleged that the petitioner is purchasing this blue kerosene from various tanker drivers and thereafter selling the same by charging high price. The detaining authority after considering the material on record has detained the petitioner under preventive detention under the provisions of Prevention of Black Marketing Act and Maintenance of Supplies of Essential Commodities Act, 1980. The said order of detention is under challenge in this petition.

2) Mr.Dave, learned advocate for the petitioner submitted that the petitioner has made a representation to the detaining authority on 16-5-2004, which was received by the jail authority on 19-5-2004 and the same was forwarded to the Central Government on the same day. It is further submitted that the said representation was decided by the Central Government on 28-5-2004, therefore, there is a delay of about 8 days in deciding the representation of the petitioner by the Central Government, and in view of this delay in deciding representation, this petition is required to be allowed.

3) Affidavit-in-reply has been filed by the Central Government, wherein in para 5 it is stated as under :

> "5. As regards contention made in para 8 of the petition, it is submitted that the representation dated 19.5.2004 made by the detenu in Gujarati language was received in the Central Government on 21.5.2004 through Office of the Superintendent, District Prison, Junagadh vide their letter dated 19.5.2004. The State Government was requested to furnish English version of the representation vide telegram dated 21.5.2004. A copy of the same representation was also received in the Central Government on 24.5.2004 through Office of the District Magistrate, Vadodara vide their letter dated 21.5.2004. English version of the representation dated 19.5.2004 was received in the Central Government on 25.5.2004 and in the concerned

Section on 26.5.2004 through State Government vide their letter dated 21.5.2004. After considering the representation along with reports and grounds of detention and other relevant records of the case, the same was rejected by the Competent Authority in the Central Government on 28.5.2004. The decision of the Central Government was conveyed to Superintendent, District Jail, Junagadh on 28.5.2004 by telegram with a direction to convey the same to the detenu. State Government was also informed simultaneously on the same day. Thus, the representation of the detenu was considered by the Central Government as expeditiously as possible."

4) Mr.Dave has submitted that even as per the said affidavit, it is clear that the Central Government has received English version of the representation of the petitioner on 25th May, 2004. Thereafter, it was the duty of the concerned department to decide the representation of the petitioner forthwith, instead of that, the same was decided on 28th May, 2004 and therefore, there is a delay in deciding representation of the petitioner. For this purpose, the learned advocate for the petitioner has relied upon the decision of the Supreme Court in Rajammal v. State of Tamil Nadu & another, reported in AIR 1999 SUPREME COURT 684, wherein it is held as under :

"It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Art.22 of the Constitution for the decision to be taken on the representation the words "as soon as may be" in cl.(5) of Art.22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The Court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing the representation. It is not enough to say that the delay was very short.

> Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Thus in the present case, the Government which received remarks from different authorities submitted the relevant files before the Under Secretary for processing it on the next day. The Under Secretary forwarded it to the Deputy Secretary on the next working day. Thereafter the file was submitted before the Minister who received it while he was on tour. The Minister passed order after five days and there was no explanation whatsoever as for the delay which occurred thereafter. Merely stating that the Minister was on tour and hence he could pass orders only after five days is not a justifiable explanation, when the liberty of a citizen guaranteed under Art.21 of the Constitution is involved. Absence of the Minister at the Head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen."

5) It is no doubt true that the representation of the petitioner has remained unattended for three days, and the same was decided after three days, even after receipt of English version of the representation. In that view of the matter, since the representation of the petitioner is not dealt with forthwith, this petition is required to be allowed, as further detention of the petitioner would be violative of Article 22 (5) of the Constitution of India and the same is held to be illegal.

6) At this stage, learned advocate for the petitioner submitted that the petitioner is already released on bail in connection with criminal case, and in future, if it is found that the petitioner has again indulged in such activities of black marketing, the State may prefer appropriate application for cancellation of bail. This statement is recorded. Under these circumstances, if it is found by the State Government that the petitioner has again indulged in such activities, it is always open for the State Government to move the concerned Court for cancellation of bail of the petitioner and it is for the concerned Court to decide such application in accordance with law.

7) In view of above discussion, this petition is

allowed. The continuous detention of the detenu is held to be illegal and the detenu, Mahebubbhai Allarkha Diwan is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar,J.)
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